

TRANSCRIPT OF PROCEEDINGS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of:

Maritime Communications/Land Mobile, LLC et
al.

For commission consent to assignment of various
authorizations in wireless radio service

EB Docket No. 11-71

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Before the
Federal Communications Commission
Washington, D.C. 20554

-----¶
:
In the Matter of: EB Docket No.
: 11-71
MARITIME COMMUNICATIONS/LAND, :
MOBILE, LLC : File No.
: EB-09-IH-1751
Participant in Auction No. 61 :
and Licensee of Various : FRN:
Authorizations in the Wireless : 0013587779
Radio Services :
: Application
Applicant for Modification of : File Nos.
Various Authorizations in the : 0004030479
Wireless Radio Services : 0004144435
: 0004193028
Applicant with ENCANA OIL AND : 0004193328
GAS (USA), INC.; DUQUESNE : 0004354053
LIGHT COMPANY, DCP MIDSTREAM; : 0004309872
JACKSON COUNTY RURAL MEMBERSHIP : 0004310060
ELECTRONIC COOPERATIVE; PUGET : 0004314903
SOUND ENERGY, INC.; ENBRIDGE : 0004315013
ENERGY COMPANY, INC.; : 0004430505
INTERSTATE POWER AND LIGHT : 0004417199
COMPANY; WISCONSIN POWER AND : 0004419431
LIGHT COMPANY; DIXIE ELECTRIC : 0004422320
MEMBERSHIP CORPORATION, INC.; : 0004422329
ATLAS PIPELINE-MID CONTINENT, : 0004507921
LLC; DENTON COUNTY ELECTRIC : 0004153701
COOPERATIVE, INC., DBA COSERV : 0004526264
ELECTRIC; AND SOUTHERN : 0004636537
CALIFORNIA REGIONAL RAIL : 0004604962
AUTHORITY :
:
For Commission Consent to the : Tuesday
Assignment of Various : May 22, 2012
Authorizations in the Wireless :
Radio Service :
:-----¶

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VOLUME V

Room A, TW A-363
FCC Headquarters
445 12th Street, S.W.
Washington, D.C.

The above-entitled matter came on for
prehearing conference, pursuant to notice, at
10:00 a.m.

BEFORE:

THE HONORABLE RICHARD L. SIPPEL
Chief Administrative Law Judge

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PAMELA S. KANE, Deputy Chief; and
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ALSO PRESENT:

MARY GOSSE
DENISE VILLARREAL

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1 P-R-O-C-E-E-D-I-N-G-S

2 (10:07 a.m.)

3 JUDGE SIPPEL: This is a
4 prehearing conference in the matter of
5 Maritime, EB docket number 11-71. The time is
6 10:00 a.m. or thereabout. Mr. Havens is on
7 the speakerphone with my authorization.

8 I'm going to start with counsel.
9 Please identify themselves this morning.
10 Again, Ms. Kane?

11 MS. KANE: Pamela Kane for the
12 Enforcement Bureau. And with me is co-counsel
13 Brian Carter.

14 JUDGE SIPPEL: Brian Carter.
15 Okay. Thank you.

16 And for Maritime?

17 MR. KELLER: Robert Keller for
18 Maritime. I also have with me Mr. John
19 Reardon, who is the General Manager of
20 Maritime Operations.

21 JUDGE SIPPEL: Spell the name,
22 please.

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1 MR. KELLER: R-e-a-r-d-o-n.

2 JUDGE SIPPEL: R-e-a-r-d-o-n?

3 MR. KELLER: Reardon, John.

4 JUDGE SIPPEL: And he is what?

5 MR. KELLER: He is the -- he
6 manages the day-to-day operations for
7 Maritime. He's one of the three employees at
8 this point.

9 JUDGE SIPPEL: Okay. Maritime
10 Manager?

11 MR. KELLER: Yes.

12 JUDGE SIPPEL: Okay. Good
13 morning, Mr. Reardon.

14 MR. REARDON: Good morning, Your
15 Honor.

16 JUDGE SIPPEL: And I have a
17 question while we're talking about identifying
18 people. Who is Mr. Smith who shows up on
19 affidavits from time to time?

20 MR. KELLER: Mr. Smith is one of
21 the other employees, the engineer who sees
22 most of the technical matters.

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1 JUDGE SIPPEL: And is he still
2 with the company?

3 MR. KELLER: Yes.

4 JUDGE SIPPEL: And he shows up
5 daily?

6 MR. KELLER: Yes, yes. He's --
7 the company. Mr. Reardon is based here in
8 Virginia, Alexandria, but the two other
9 employees, the Sharon Watkins, who is a
10 bookkeeper, and Robert T. Smith, Tim Smith,
11 who is an engineer, are based in Clarksville,
12 Indiana.

13 JUDGE SIPPEL: And what is Ms.
14 Watkins' first name again?

15 MR. KELLER: Sharon Watkins,
16 W-a-t-k-i-n-s.

17 JUDGE SIPPEL: I got that part,
18 but how do you spell the first part?

19 MR. KELLER: S-h-a-r-o-n.

20 JUDGE SIPPEL: Oh, Sharon. Okay.

21 MR. KELLER: I'm sorry. My --

22 JUDGE SIPPEL: No. That's okay.

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1 MR. KELLER: My kids tell me I
2 mumble.

3 JUDGE SIPPEL: Not really. But
4 she is the bookkeeper?

5 MR. KELLER: Yes.

6 JUDGE SIPPEL: Now, while I'm on
7 this, I might as well get it clear. Both Mr.
8 Smith and Ms. Watkins are where, Indiana?

9 MR. KELLER: Clarksville, Indiana.
10 It's Louisville, Kentucky metropolitan area,
11 Clarksville, Indiana, C-l-a-r, Clarks.

12 JUDGE SIPPEL: I know how to do
13 it. Clarksville, Indiana. But how did --
14 okay. It's not that important.

15 MR. KELLER: That's where the
16 offices are.

17 JUDGE SIPPEL: Yes. Okay. Main
18 offices?

19 MR. KELLER: Yeah. That's where
20 Maritime is based.

21 JUDGE SIPPEL: Okay. And that's
22 where Depriest does its business, Depriest?

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1 MR. KELLER: No. That's where
2 Maritime does its business. Depriest is in
3 Mississippi.

4 JUDGE SIPPEL: Mississippi?

5 MR. KELLER: Right.

6 JUDGE SIPPEL: Okay. Okay. And
7 Depriest -- what are the -- I'm going to do
8 this as long as I've got the subject. The
9 Depriests, what are their -- it's husband and
10 wife.

11 MR. KELLER: Uh-huh.

12 JUDGE SIPPEL: And what are their
13 officer positions with the company?

14 MR. KELLER: That's in the record,
15 sir. I don't want to say it out loud. You
16 might know better than I.

17 MR. REARDON: Sandra is the
18 president and the board member.

19 JUDGE SIPPEL: Sandra is president
20 and board member.

21 MR. REARDON: And I believe she's
22 the maybe 98 percent owner, Your Honor, with

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1 a membership interest.

2 JUDGE SIPPEL: Ninety-eight
3 percent owner?

4 MR. REARDON: Yes.

5 JUDGE SIPPEL: Okay. So she
6 doesn't get --

7 MR. KELLER: No, sir.

8 JUDGE SIPPEL: And who is the
9 other person? Her husband?

10 MR. KELLER: Well, her husband:
11 Donald Depriest.

12 JUDGE SIPPEL: Okay. And Donald
13 is? What rank does he have?

14 MR. KELLER: Well, none, really,
15 because that's part of the issue in the other
16 aspect of this case is what --

17 JUDGE SIPPEL: He doesn't have
18 any?

19 MR. KELLER: Right.

20 JUDGE SIPPEL: He's just --

21 MR. KELLER: Officially no, right.

22 JUDGE SIPPEL: He just drives a

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1 car and --

2 MR. KELLER: There's an issue.
3 There's an issue, obviously, about the whole
4 -- the main basic qualifying issue has to do
5 with whether or not he was a real party in
6 interest.

7 JUDGE SIPPEL: Okay. That's what
8 I'm asking for, is what is represented by
9 Maritime. I'm not going to get into the --

10 MR. KELLER: Exactly.

11 JUDGE SIPPEL: -- guts of these
12 questions, just for identification. Okay.
13 So, as far as Maritime is concerned, Mr.
14 Donald Depriest owns nothing, I mean, except
15 as far as these matters are concerned?

16 MR. KELLER: What has been stated
17 on the record is that he has no official
18 ownership.

19 JUDGE SIPPEL: No official
20 ownership. That's good enough.

21 MR. KELLER: I mean, there has
22 been a ruling, pre-designation, in this case

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1 that he has attributed spousal attribution of
2 his --

3 JUDGE SIPPEL: Well, I don't want
4 to get into that. I just want to know --

5 MR. KELLER: That's already been
6 ruled.

7 JUDGE SIPPEL: The company runs on
8 a day-to-day basis. Who is doing what? And
9 he has no official ownership. And I take it
10 he does basically nothing in --

11 MR. KELLER: No. I think he --

12 MS. KANE: Your Honor, we're
13 concerned about this because this is an issue
14 that is placed in the hearing. And we have
15 been precluded from obtaining discovery since
16 you have stayed those issues. So for Maritime
17 to be able to offer discovery here and --

18 JUDGE SIPPEL: They're not doing
19 that. No, no.

20 MS. KANE: They're offering their
21 testimony as to what the position --

22 JUDGE SIPPEL: It's not testimony.

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1 It's counsel's statements.

2 MS. KANE: Well, you have Mr.
3 Reardon here and --

4 JUDGE SIPPEL: He's not under
5 oath. I know you made a point of this before.
6 This is not going to come back to haunt us.
7 I can assure you of that. It's not going to
8 --

9 MS. KANE: Well, there are
10 statements being made on behalf of Maritime
11 that could be deemed later to be admissions by
12 Maritime. And we would --

13 JUDGE SIPPEL: Admission doesn't
14 help them. You can't make an admission and
15 help yourself with it.

16 MS. KANE: Well, Your Honor, you
17 know, this is all something that is subject to
18 discovery in the hearing.

19 JUDGE SIPPEL: Right.

20 MS. KANE: But we haven't had the
21 opportunity to investigate that.

22 JUDGE SIPPEL: I am going to move

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1 right off it. I was simply trying to just get
2 Maritime's view that these people -- their
3 representatives feel as to who does what over
4 there. I'm finished. And I will be very
5 sensitive to your concerns.

6 MS. KANE: Thank you, Your Honor.

7 JUDGE SIPPEL: Now, we have other
8 people in the courtroom. Do we have any other
9 attorneys in the courtroom? Sir?

10 MR. PLACHE: Matthew Plache with
11 Catalano and Plache, PLLC, representing
12 Pinnacle Wireless.

13 JUDGE SIPPEL: Pinnacle? Okay.
14 We've been getting some things from Pinnacle.
15 Okay.

16 MR. JACKSON: Robert H. Jackson
17 from Marashlian and Donahue representing
18 Environmental, LLC; Intelligent Transportation
19 and Monitoring Wireless, LLC; and Verde
20 Systems, LLC.

21 JUDGE SIPPEL: All right. Anybody
22 else?

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1 MR. COLE: Your Honor?

2 JUDGE SIPPEL: Of course. Mr.
3 Cole?

4 MR. COLE: Wouldn't be here
5 without me, Your Honor.

6 JUDGE SIPPEL: Representing the
7 situation, I guess.

8 MR. COLE: Harry Cole. I'm
9 representing Southern California Regional Rail
10 Authority, hoping against hope that Ms. Kane
11 will advise us that the Commission has ruled
12 on our footnote 7 showing.

13 JUDGE SIPPEL: Have they found it
14 yet?

15 (Laughter.)

16 MR. COLE: I have no information
17 on that, Your Honor.

18 JUDGE SIPPEL: I knew the last
19 time we talked about this, it was someplace
20 between here and there.

21 MR. COLE: Nobody seems to be able
22 to 'fess up to this as to who has it on their

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1 desk, but my guess is that the Commission
2 staff is assuming that there will be a second
3 Thursday showing coming in, which may trump or
4 supersede the footnote 7 showing. I don't
5 know that for sure, but that's just my
6 operative theory.

7 MR. KELLER: But now we have two
8 extra commissioners that have looked for it.
9 So --

10 JUDGE SIPPEL: They're going to be
11 happy to know that.

12 Did anybody ever get the idea of
13 maybe sending another copy? I mean --

14 MR. COLE: Oh, no. We have
15 ascertained that it is somewhere in the
16 Commission. They know that it is there, but
17 it's just that there appear to be -- put it
18 off to one side of the desk in anticipation of
19 a second Thursday showing. The bankruptcy has
20 complicated things. And I think the operative
21 notion within the Commission is that they're
22 going to wait and see what happens.

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1 JUDGE SIPPEL: Okay.

2 MR. COLE: This is just guesswork
3 based on our general inability to find out
4 much more than that.

5 JUDGE SIPPEL: It's the old
6 principle put off for today what might happen
7 tomorrow. Okay. I guess we're clear on that.

8 But you're representing again? I
9 didn't get that down.

10 MR. COLE: Southern California
11 Regional Rail Authority, SCRRA.

12 JUDGE SIPPEL: Right, same client.
13 Okay.

14 Have I left anybody out?

15 (No response.)

16 JUDGE SIPPEL: Good. That's fine
17 with me.

18 Now, this conference was requested
19 by Maritime, correct?

20 MR. KELLER: Yes, Your Honor.

21 JUDGE SIPPEL: Mr. Keller?

22 MR. KELLER: Yes, Your Honor.

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1 JUDGE SIPPEL: And at this point
2 what is it that you want to accomplish this
3 morning?

4 MR. KELLER: Well, I really want
5 to address based on everything that has
6 happened before and then since we have asked
7 this, I really have three issues to address.
8 One is I want to address -- two of them are
9 very directly related discovery.

10 One is some issues regarding Mr.
11 Havens, his representation of the Havens
12 entities, and some issues surrounding
13 discovery protective order, et cetera.

14 Secondly, there are some
15 outstanding issues with respect to discovery.
16 There is a difference of opinion between
17 Maritime and the Bureau on the extent to which
18 Maritime has complied with discovery and all
19 of that. And it seemed to be that every time
20 pleadings were filed, more pleadings were
21 filed. And I figured let's just get your
22 impression and iron it out because, you know,

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1 we believe that we have provided information.

2 We are also prepared to make
3 significant stipulations to greatly narrow the
4 scope of the issues on this issue G. And so
5 we want to discuss that.

6 And, then finally, I was just
7 going to give you an update on the report on
8 where we stand with respect to the bankruptcy.

9 JUDGE SIPPEL: Okay. Well, I like
10 what you've said about the stipulations, and
11 I like the update.

12 Can you hear me? Do you know
13 what's going on here, Mr. Havens?

14 MR. HAVENS: Yes.

15 JUDGE SIPPEL: Okay. Where is Mr.
16 Jackson?

17 MR. JACKSON: Right here, Your
18 Honor.

19 JUDGE SIPPEL: Okay. Exactly who
20 are you representing?

21 MR. JACKSON: I am representing
22 several of Mr. Havens' companies.

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1 JUDGE SIPPEL: They've been
2 identified.

3 MR. JACKSON: Yes.

4 JUDGE SIPPEL: Okay. Now, it
5 stops there. And you have nothing to do with
6 the companies that you have identified? Are
7 they just hanging out there without attorneys?

8 MR. JACKSON: That's correct, Your
9 Honor. Our firm was hired to represent these
10 three companies.

11 JUDGE SIPPEL: And what about Mr.
12 Havens? He's unrepresented as far as you're
13 concerned?

14 MR. JACKSON: He's not my client
15 directly for this matter. He is, of course,
16 president of these three entities that I
17 represent, but I am not representing him as an
18 individual or the companies that he is
19 representing pro se or --

20 JUDGE SIPPEL: Do you understand
21 my ruling in the last order? Do you
22 understand that he can represent himself if he

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1 thinks he's capable of doing that but none of
2 the companies? The rule prohibits him --
3 precludes him, I should say, from representing
4 corporate entities.

5 MR. JACKSON: I understand your
6 ruling, Your Honor.

7 JUDGE SIPPEL: Okay. You do, Mr.
8 Havens, too, I take it?

9 MR. HAVENS: This was not the
10 content that I expected to be on the agenda
11 today. However, I would like to address that
12 unless you want me to talk about that now.

13 JUDGE SIPPEL: No, no, no. I'm
14 just asking you, do you understand what I
15 wrote in the order?

16 MR. HAVENS: I understand that for
17 the purpose of today -- and I'll separately
18 address certain issues there -- I mean, the
19 hearing rules allow judges discretion. And I
20 assume your past ruling exercised your
21 discretion, although, again, I didn't plan to
22 take everyone's time today on that.

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1 But in terms of currently I am
2 here today only with regard to myself.

3 JUDGE SIPPEL: Okay. I know.
4 That's fine, sir. Now, I understand. And I
5 didn't want it to go any further than what I
6 asked. So I'm satisfied with your answer for
7 now. Okay.

8 There are a couple of issues on
9 discovery. You're going to give a report on
10 bankruptcy status. And you say you've got
11 stipulation. Does the Bureau know about those
12 stipulations that --

13 MR. KELLER: Well, the Bureau and
14 Maritime attempted to work out stipulations.
15 And we went back and forth --

16 JUDGE SIPPEL: Right.

17 MR. KELLER: -- on several rounds
18 and wanted to come to a mutual agreement.
19 Nevertheless, you know, I am prepared to offer
20 some unilaterally here, I believe. It may not
21 go as far as the Bureau wants, but I don't
22 know why they wouldn't be acceptable. And I

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1 think they do greatly --

2 JUDGE SIPPEL: But you haven't
3 discussed that with the Bureau before coming
4 in here?

5 MR. KELLER: Well, these are not
6 going to be a surprise to the Bureau because
7 they're along the same lines we discussed
8 before we came in here.

9 JUDGE SIPPEL: Okay. Well, let's
10 --

11 MR. KELLER: I'm sorry to
12 interrupt you, Your Honor.

13 JUDGE SIPPEL: No. Go right
14 ahead.

15 MR. KELLER: I sort of feel like
16 maybe this issue with the Havens
17 representation is something I do want to say
18 something about.

19 JUDGE SIPPEL: Go ahead.

20 MR. KELLER: And that is, now, we
21 have not filed anything formal on this yet,
22 but we have an issue with, notwithstanding the

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1 discretion in saying Mr. Havens can represent
2 himself, I would refer you to a case -- and I
3 can send you copies after the hearing -- Black
4 Television Workshop of Los Angeles, 70 F-60
5 Record 6868.

6 JUDGE SIPPEL: F-60 Record?

7 MR. KELLER: Sixty-eight,
8 sixty-eight.

9 JUDGE SIPPEL: Six, eight, six,
10 eight?

11 MR. KELLER: Right. It's a 1992
12 decision by the Commission. And in paragraph
13 6 of that order -- and I'm just going to read
14 you the pertinent language here -- it says,
15 "The rights of self-representation and
16 representation by counsel cannot both be
17 exercised at the same time. A party" --

18 JUDGE SIPPEL: Say it again now.

19 MR. KELLER: "The rights of
20 self-representation" --

21 JUDGE SIPPEL: Yes.

22 MR. KELLER: -- "and

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